

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U-901-E) and
MidAmerican Energy Holdings Company for
Exemption Under Section 853(b) from the
Approval Requirements of Section 854(a) of the
Public Utilities Code with Respect to the
Acquisition of PacifiCorp by MidAmerican.

Application 05-07-010
(Filed July 15, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO INTERVENE**

1. Summary

This Ruling denies the Greenlining Institute's (Greenlining) motion to intervene in this proceeding.

2. Summary of Motion to Intervene

Greenlining filed a motion to intervene on October 19, 2005. Greenlining seeks to intervene in order to address several issues, including:

- How the proposed acquisition of PacifiCorp by MidAmerican Energy Holdings Company (MEHC) will affect California's low income and minority communities, including: (1) the diversity of the Applicants' suppliers, senior management, and board members; (2) corporate philanthropy; and (3) the Applicants' plans for CARE and other programs for low-income customers in light of the forecast increase in the price of natural gas and electricity this coming winter.
- The long-term implications associated with the recent repeal of the Public Utility Holding Company Act of 1935 (PUHCA). Greenlining believes that the repeal of PUHCA and MEHC's acquisition of PacifiCorp portends an effort by the owner of MEHC, Berkshire Hathaway, to acquire a major California energy utility.

- Whether MEHC and PacifiCorp should be required to deploy Broadband Over Power Line (BPL) technology in California to help bridge the digital divide.

Greenlining contends that the above issues are particularly relevant in light of Berkshire Hathaway's "limitless pool of liquid capital." Greenlining also requests evidentiary hearings and additional public participation hearings to address the above issues.

3. Applicants' Response

The Applicants oppose Greenlining's motion to intervene. They state that the Greenlining did not file a protest, did not attend the prehearing conference or the settlement conference, and did not submit written testimony on issues within the scope of this proceeding. The Applicants argue that Greenlining's motion to intervene is extremely untimely and, on that ground alone, should be denied.

The Applicants contend that the issues raised by Greenlining go beyond the scope of this proceeding as set forth in the Assigned Commissioner's Scoping Memo issued on September 26, 2005. They state that that there is no basis for Greenlining's claim that MEHC is poised to take over other electric utilities in California. The Applicants also insist that it is inappropriate to consider in this proceeding Greenlining's proposal to require the Applicants to deploy BPL technology, as the BPL issue is being considered in another docket and is unrelated to MEHC's proposed acquisition of PacifiCorp.

The Applicants oppose Greenlining's request to assess the Applicants' plans for shielding low-income customers from natural gas prices spikes and related electric rate increases. They state that PacifiCorp does not provide natural gas service, and that PacifiCorp relies on gas-fired electric generation to a

lesser degree than other California utilities. Additionally, PacifiCorp cannot pass on fuel price increases in electric rates except through a general rate proceeding.

Finally, the Applicants oppose Greenlining's demand that MEHC demonstrate its commitment to philanthropy and the minority community. The Applicants maintain that they have addressed these types of issues in the Settlement Agreement with several parties, including several Indian tribes, filed on October 21, 2005.

4. Ruling

The Assigned Commissioner's Scoping Memo issued on September 26, 2005, established the scope and schedule for this proceeding. All of the issues raised by Greenlining are outside the scope of this proceeding. As the Applicants correctly note, several key milestones in this proceeding have already passed. Expanding the scope of this proceeding at this late stage is not possible within the schedule set forth in the Scoping Memo.

Rule 54 requires parties that seek to intervene at a late stage in a proceeding to demonstrate that the issues they seek to address are "reasonably pertinent to the issues already presented" and to disclaim any right to unduly broaden such issues. Greenlining's motion seeks to inject new issues in this proceeding that go far beyond the issues already presented. Thus, the motion does not comply with the Commission's Rules.

Many of the issues raised by Greenlining's motion will be addressed in other Commission forums or proceedings. For example, the diversity of suppliers is addressed through General Order 156,¹ workforce diversity is

¹ General Order 156, which implements § 8281 et seq., requires utilities to establish minimum long-term goals for supplier and vendor diversity.

reviewed in general rate cases, programs for low income customers are addressed in a variety of other proceedings,² and BPL is being addressed in Rulemaking 05-09-006. In addition, certain other issues raised by Greenling are beyond the Commission's jurisdiction to decide. For example, the Commission has no jurisdiction over corporate philanthropy, although the Commission has strongly encouraged such philanthropy.³

It is not necessary to expand the scope of this proceeding to consider the long-term implications for California's energy utilities stemming from the repeal of PUHCA. The repeal of PUHCA does not alter the Commission's duty to protect the public interest or diminish the Commission's capacity to do so. With or without PUHCA, the Commission will carefully review any transaction involving the acquisition or merger of a California energy utility, including the proposed transaction that is the subject of the instant proceeding.

Greenlining engages in pure speculation when it asserts that MEHC's acquisition of PacifiCorp foreshadows an effort by MEHC's parent company, Berkshire Hathaway, to acquire a major California Energy utility. Even if Greenlining is ultimately proven to be prescient, the acquisition of PacifiCorp by MEHC must be considered on its own merits. Greenlining has not shown that a future transaction involving Berkshire Hathaway and a major California energy utility has any material nexus or relevance to the Commission's decision on whether to approve the acquisition of PacifiCorp by MEHC.

² See, for example, D.04-02-057 and D.03-03-007.

³ D.04-12-015, 2004 Cal. PUC Lexis 574, at *54 and *90-91; D.04-05-055, 2004 Cal. PUC Lexis 254, at *162-163.

For all of the reasons set forth above, Greenlining's motion to intervene in this proceeding is denied.

IT IS RULED that the Greenlining Institute's motion to intervene is denied.

Dated November 17, 2005, at San Francisco, California.

/s/ TIMOTHY KENNEY by LTC

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Intervene on all parties of record in this proceeding or their attorneys of record.

Dated November 17, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.